

Exhibit 3



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC., (CAUSE NO. 2:21-CV-463-JRG
)
Plaintiff, ()
vs. ()
SAMSUNG ELECTRONICS CO., LTD., ()
et al., () MARSHALL, TEXAS
(APRIL 14, 2023
Defendants.) 9:00 A.M.

VOLUME 1

TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE
and a jury

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1 scenes. So we know that companies, they issue press releases,
2 they have slick commercials, they have press staff. But
3 sometimes, and especially in federal courts, we are allowed to
4 pull back the curtain and to see what Samsung actually thinks.

5 This is an example of it. This is PX 1756. And it's
6 very clear that what I say in this opening is not evidence.
7 These documents are evidence. And these are Samsung's words
8 from 2019, long before this lawsuit was initiated, in which
9 Samsung candidly admitted that they were focused on obtaining
10 rights to our patents on LRDIMM.

11 You can write this number down. If you want to see it in
12 deliberations, you will be able to do so.

13 Samsung internally wrote down they wanted our patents on
14 LRDIMM. One of the products that is accused of infringement
15 in this case is LRDIMM. My words are not evidence. What's on
16 the screen in front of you is evidence.

17 This was not once. This is another example of an
18 internal Samsung document. You'll notice the reference to
19 company N. Company N is the internal code word that Samsung
20 used for Netlist. That will not be disputed. Samsung
21 witnesses will concede that is the internal code word for
22 Netlist.

23 And, once again, Samsung focuses in this internal
24 document on the fact that it needs our patents on RDIMM and
25 LRDIMM. RDIMM is one of the other categories of products that

1 who prepared this document?

2 A. This was prepared by Samsung.

3 Q. And what does it state regarding Netlist's LRDIMM
4 technology?

5 A. So it's stating that Netlist has a -- or is known in the
6 industry to have created a system for LRDIMM technology.

7 Q. And this is PX 1756. Is that correct?

8 A. That is correct, sir.

9 Q. And did Samsung make statements on whether it planned on
10 using Netlist's LRDIMM patents in these same documents?

11 A. Yes, they did.

12 THE REPORTER: I'm showing you another page from
13 1756. This is page 4. What did --

14 THE COURT: Could you slow down, Mr. Sheasby?

15 MR. SHEASBY: Yes, Your Honor.

16 THE COURT: You're pretty fast over there.

17 MR. SHEASBY: Yes, Your Honor.

18 THE COURT: Thank you.

19 Q. (BY MR. SHEASBY) I'm showing you another page from
20 PX 1756. What is this depicting?

21 A. So this is stating that for the LRDIMM patents in
22 particular, that Samsung wants to enter into a license
23 agreement so they don't have to pay a separate royalty.

24 Q. And it's referring to LRDIMM patents. Is that correct?

25 A. That is correct, sir.

1 Q. And this is PX 1663. Is this another Samsung document?

2 A. Yes, sir.

3 Q. And what does it say?

4 A. So here we're talking about we moved ahead to enter into
5 an agreement for technical collaboration to resolve the patent
6 risk related to LRDIMM.

7 Q. The third family you talked about is the '060 and '160
8 Patents. Is that correct?

9 A. That's correct.

10 MR. SHEASBY: Mr. Huynh, can we have slide 57,
11 please?

12 Q. (BY MR. SHEASBY) And these are the two patent families.
13 Is that correct?

14 A. The two patents in that family, yes.

15 Q. And this is JTX 5 and 6. Is that correct?

16 A. That is correct.

17 Q. So I want to show you a document. This is PX 1778. What
18 is PX 1778?

19 A. So this document is a description of the '060 Patent that
20 was provided to Samsung.

21 Q. And was the actual document provided to Samsung or was a
22 presentation given?

23 A. A presentation was given.

24 Q. And I want to show you -- so this describes the '060
25 Patent as relating to TSVs. Is that correct?

IN THE UNITED STATES DISTRICT COURT
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)
Plaintiff, ()
vs. ()
SAMSUNG ELECTRONICS CO., LTD., ()
et al., () MARSHALL, TEXAS
(APRIL 21, 2023
Defendants.) 8:00 A.M.

VOLUME 6

TRIAL ON THE MERITS

BEFORE THE HONORABLE RODNEY GILSTRAP
UNITED STATES CHIEF DISTRICT JUDGE
and a jury

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1 MR. SHEASBY: May it please this Honorable Court.

2 Good morning, ladies and gentlemen of this jury. I want
3 to thank you again for your service. I am acutely aware that
4 it is a financial and personal sacrifice to do what you have
5 done, but I hope that you can understand how incredibly
6 important, incredibly important, this case is to Netlist.

7 Netlist was founded in 2000 in Orange County, and the
8 goal and vision of Netlist was to create American innovation
9 in the memory module space. And today there are 120 employees
10 who are dedicated to that goal.

11 Samsung Electronics, you heard from Samsung's corporate
12 representative, is the largest memory company in the world.
13 He spoke about \$19 billion in research and development they
14 spend each year. He spoke about 12,000 patents they hold.
15 And yet they came to Netlist, a small company in Orange County
16 in California and asked for a technical collaboration.

17 And they did this, and it was candidly admitted under
18 oath, because they wanted to access our patents and because
19 they wanted our skill in joint development.

20 The reason why they wanted to access our patents is that,
21 although Samsung is innovative in many, many spaces, as it
22 relates to these particular products, the innovation was
23 created by Netlist.

24 These are not my words; these are the admissions of
25 Samsung's corporate representatives. For DDR4, for DDR5, for

1 HBM, not a single Samsung patent covers the products at issue
2 here. And the reason for that is because the patents that are
3 used in these products are Netlist patents.

4 And as the Court said, Samsung no longer has a license,
5 no longer has a right to use the patents in this case, and
6 it's in this forum, a federal court, that the consequences of
7 its actions will be determined.

8 The first issue you'll be asked to decide is
9 infringement. Infringement is an issue on which Netlist bears
10 the burden, and it's preponderance of the evidence. And what
11 that means is that if one pebble, just one pebble more weighs
12 in favor of Netlist, you're required by law to find that
13 Samsung infringes. That's what preponderance of the evidence
14 means.

15 The first family of patents is the '918 and the '054
16 Patents, and Doctor Mangione-Smith spoke about those.

17 Doctor Mangione-Smith, could you please stand and be
18 acknowledged? Thank you very much, sir.

19 The products that accuse the '918 and '054 Patents are
20 called the DDR5 products with on-module power management.

21 I am putting in the corners of each of the exhibits the
22 exhibit numbers. You can ask for exhibit numbers in your
23 deliberations. And so if someone has a question or you have a
24 question, you'll be able to respond to them and say, we can
25 look at this exhibit.

1 distraction designed to focus on not the issues that are
2 presented in this case.

3 And I say that not just by my own words but under the
4 words of Samsung's expert, Mr. McAlexander. And what he
5 testified to is that the modules contain flash. Flash is a
6 non-volatile memory, and every single DDR5 module that Samsung
7 sells includes non-volatile memory.

8 This is another example where I'm asking you, do not take
9 my word for it. JTX 12 at page 16, JTX 12 at 16, it will say
10 in clear English, a Samsung confidential document,
11 non-volatile memory.

12 The second family of patents that are at issue in this
13 case is the '339 Patents. And Doctor Mangione-Smith will
14 speak -- spoke about those as well. These relate to
15 load-reduced dual in-line memory modules.

16 This is a patent family that I struggle with how to start
17 to explain to you. And the reason for that is because the
18 idea that this patent family is not infringed absolutely
19 contradicts everything Samsung said in its internal documents
20 in 2019. PX 1756, a candid 2019 email from Samsung itself, a
21 formal document, and they say Netlist created LRDIMM, and yet
22 today when they face the consequences of their action, they
23 deny using our technology, the exact opposite of what they
24 said in 2019.

25 And it wasn't just once. They said it again and again

1 and again that they wanted our LRDIMM patents. This is, once
2 again, 1756. Why did they say that? Why is there this
3 dramatic change between 2019 and today? It's the last
4 sentence. The last sentence tells it all. They wanted our
5 technology, and they did not want to compensate for it. And
6 this lawsuit exist because they took the technology and they
7 did not want to compensate us for it. And it's in plain
8 written English in a document from 2019 that you can access.

9 The limitation at issue in this case is, once again, all
10 but one element is conceded infringed, and the element that's
11 not infringed is this reference to a drive. Driving. And
12 driving means enabling only one of the data paths while the
13 other possible data paths are disabled.

14 Now, Doctor Mangione-Smith pointed out to you and
15 specifically pointed out that because the buffers have an
16 upper nibble and a lower nibble, there are two paths, path one
17 and path two, and the data, as it comes in, can make a choice
18 as to what path it goes on. And he spoke about the fact that
19 those are different transmissions, two paths, the upper half
20 byte and the lower half byte.

21 Now, one of the things that I think is particularly
22 concerning, and I'd ask that you be very careful with this, is
23 that the ability to cherry-pick small isolated passages from
24 transcripts in a deposition or at trial often veils the truth.
25 In any one point in time, there is only one path for a

1 MR. SHEASBY: Can I have slide 1.132, please?

2 Counsel for Defendants asked where the invention story
3 was, that Netlist is nothing, that these are faked patents
4 created by patent attorneys.

5 The invention story is in Samsung's own documents. In
6 2019, 1756, a unique proprietary know-how that they wanted to
7 access. Two years before they launched their infringing DDR5,
8 they came to us and asked us how to design DDR5 on-module
9 power management. This is PX 586. They conceded that we're
10 the company that created the LRDIMM technology. Where is the
11 invention story? The invention story is admitted in Samsung's
12 own documents.

13 We're here for one reason and one reason only, and it's
14 admitted in the last line of 1756, because Samsung refuses to
15 and will not pay for its use and infringement of these
16 patents.

17 Patents are not pathetic. Mr. Milton is not a liar.
18 What was created here was coveted by Samsung.

19 Let's go to 1.7.

20 We are here because Samsung is violating the law. They
21 spoke about flying 7,000 miles or 6,000 miles. He flew 6,000
22 miles to tell us that they needed access to our patents and to
23 not say one explanation for why they don't infringe. It
24 doesn't matter what country you are from; in this country, you
25 follow the law.